

2567
No. 12145

United States
Court of Appeals
for the Ninth Circuit

W. M. (Alias, BILL) GILLIS,

Appellant,

vs.

BEN F. GILLETTE and IRENE GILLETTE,

Appellees.

Transcript of Record

Appeal from the District Court for the Territory of Alaska,
Second Division

FILED

Feb 19 1949

UL P. O'BRIEN,

No. 12145

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Court of Appeals
for the Ninth Circuit

W. M. (Alias, BILL) GILLIS,
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	9
Appeal:	
Assignment of Errors on.....	27
Bond on	31
Certificate of Clerk to Transcript of Record on.....	36
Citation on.....	37
Order Allowing Appeal and Fixing Amount of Bond on.....	30
Order Extending Time to File Rec- ord on.....	34
Petition for Allowance of.....	26
Praecipe on.....	34
Stipulation re Printing of Record on.	33
Assignment of Errors.....	27
Certificate of Clerk to Transcript of Record on Appeal.....	36
Citation on Appeal.....	37
Complaint	2
Exhibit A—Notice of Claim of Lien on Real Property.....	5

	PAGE
Cost Bond on Appeal.....	31
Detailed Statement of Account.....	7
Findings of Fact and Conclusions of Law....	19
Judgment	24
Names and Addresses of Counsel.....	1
Order Allowing Appeal and Fixing Amount of Cost Bond.....	30
Order Extending Time to File Transcript of Record on Appeal.....	34
Petition for Allowance of Appeal.....	26
Praeclipe for Transcript of Record.....	34
Reply	14
Statement of Account, Detailed.....	7
Stipulation re Printing of Record.....	33

NAMES AND ADDRESSES OF COUNSEL

For Plaintiff,

W. M. GILLIS,
C. C. TANNER,
Nome, Alaska.

For Defendants,

BEN F. GILLETTE and
IRENE GILLETTE,
CHELLIS CARPENTER,
Mills Building,
San Francisco, California.

In the District Court for the Territory of Alaska
Second Division

No. 3737

W. M. (Alias, BILL) GILLIS,

Plaintiff,

vs.

BEN F. GILLETTE and IRENE GILLETTE,
Defendants,

COMPLAINT

Plaintiff complains of defendants and for cause
of action alleges:

1.

That plaintiff is now, and was at all times hereinafter stated, a contractor and builder doing business as such at Nome, Alaska, and that as such contractor and builder, on and between the 10th day of September, 1946, and the 15th day of December, 1946, at the special instance and request of defendants (owners) and upon their promises to pay the reasonable value thereof, the plaintiffs performed work and labor and furnished and supplied work, labor and materials, to the defendants, in and about the removal of a frame dwelling house owned by the defendants, from Lot 1, Block L, to Lot 8, and the north 22 feet of Lot 7 in Block B, Nome, Alaska, also owned by the defendants, and the erection, alteration and repair of said building upon its new location on Lot 8 and the north 22 feet of Lot 7, Block B, aforesaid, where it is now situate; that the said labor was performed and

said materials were furnished to be used, and were actually used, in the removal, erection, alterations and repairs of said dwelling house; and that said labor and materials were of the reasonable worth and value of \$2,746.83.

2.

That the defendants were, at the dates hereinbefore mentioned, and still are, the owners and reputed owners of the premises described as Lot 8 and the north 22 feet of Lot 7, all in Block B, Nome, Alaska, as hereinbefore mentioned; and that the said premises, and the whole thereof, are required for the convenient use and occupation of said dwelling-house.

3.

That the last date upon which said work and labor of removing, altering, erecting and repairing said building was performed, and said materials were furnished, is December 15, 1946.

4.

That the plaintiff duly filed, as required by law, his claim for a lien for the amount due and owing him as aforesaid from said defendants, in the office of the recorder for the Cape Nome Precinct, Second Division, Alaska, on the 14th day of March, 1947, and within ninety days from the date the last labor was performed and materials furnished as aforesaid, which claim for lien was duly signed and verified by the claimant, plaintiff herein; A true copy of this said claim of lien is attached hereto and marked Exhibit A, and form a part of this

complaint to the same extent as though it were set forth at large herein.

5.

That no part of the price or reasonable value of said labor and materials has been paid, except the sum of One Thousand Dollars (\$1,000.00); that plaintiff has several times made demand upon defendants for the balance due and owing as aforesaid, but the defendants refused to pay, and do now refuse to pay the same; and that there is now due and owing to the plaintiff from said defendants on account of performing labor and furnishing labor and materials, as aforesaid, the sum of One Thousand Seven Hundred Forty-Six Dollars and Eighty-three cents (\$1,746.83), with interest thereon at the rate of six per cent per annum from December 16th, 1946.

Wherefore, plaintiff prays judgment against defendants and each of them, [1*] for the sum of \$1,746.83, with interest at 6% per annum from December 16th, 1946; for \$1.95, cost of filing lien; for a reasonable attorney's fee; and costs of suit; and that the said premises described as Lot 8 and the north 22 feet of Lot 7, Block B, Nome, Alaska, be sold under the decree of this court, according to law and the proceeds be applied in payment of said judgment; and that in case of deficiency arising from such sale, that the plaintiff have judgment for such deficiency and have execution thereof; and

* Page numbering appearing at foot of page of original certified Transcript of Record.

for such further relief as may be just and equitable.

/s/ C. C. TANNER,

Attorney for Plaintiff. [2]

(Duly Verified.)

EXHIBIT A

NOTICE OF CLAIM OF LIEN ON REAL PROPERTY

Notice is hereby given that a short time prior to Sept. 10th, 1946, Mr. Ben F. Gillette and Irene, his wife, of Nome, Alaska, employed and authorized Bill Gillis of Nome, Alaska, to remove a certain frame dwelling house owned by them, from Lot 1, Block L, Nome, Alaska, to premises owned by them in Nome, Alaska, and described as Lot 8, and the North 22 feet of Lot 7; to place, erect, alter and repair said building on its new location; and to furnish and supply the necessary labor, and the locally available materials necessary and practicable to accomplish the desired results.

That the said Bill Gillis commenced the employment aforesaid the 10th day of Sept., 1946, and ended such employment, and the furnishings of labor and materials, as aforesaid, on the 15th day of December (inclusive), 1946.

That under and by virtue of said employment the said Bill Gillis furnished and supplied 987 hours of labor at the regular and reasonable cost and charge of \$2,220.75; and materials, which actually went into the construction, alteration and repair of the aforementioned building, at the actual cost and

reasonable charge of \$526.08: Making a total cost and charge for labor and materials of \$2,746.83.

That the sum of \$1,000.00 has been paid on this account, leaving a balance now due and owing of \$1,746.83, after allowing and deducting all credits and offsets.

That a lien is claimed by Bill Gillis for the aforesaid sum of \$1,746.83, against the premises in Nome, Alaska, described as Lot 8, and the North 22 feet of Lot 7, all in Block B, including the residence building situate and located thereon.

That the premises against which this lien is claimed, are owned by Ben F. Gillette and Irene, his wife, of Nome, Alaska.

/s/ BILL GILLIS,
Lien Claimant.

United States of America,
Territory of Alaska—ss.

Bill Gillis, being first duly sworn on oath deposes and says: I am claimant named in the foregoing claims of lien. I have read and know the contents thereof. All things stated therein are true as I verily believe.

/s/ BILL GILLIS,

Subscribed and Sworn to before me the 14th day
of March, 1947.

[Seal] /s/ C. C. TANNER,

Notary Public for Alaska.

My Commission expires July 18, 1950.

[Endorsed]: Filed Sept. 13, 1947. [3]

[Title of District Court and Cause.]

DETAILED STATEMENT OF ACCOUNT

Comes now plaintiff herein and files detailed items of the account sued upon in this action and particularly in reference to paragraph 1 of the Complaint:

A. Items of Labor

(1) Wrecking, cleaning off and removing unsuitable concrete foundation forms prepared by Bud Harper for new location of house on Lot 8 and the No. 22 ft. of Lot 7, Block B, Nome, Alaska.

(2) Backfilling of basement on new house location to bring footing level to grade as specified and ordered by owners.

(3) Erecting on new house location, footing and wall concrete forms for full basement, plus an addition as specified by owners; all of which included the hauling and installing of reinforcement iron.

(4) Mixing, and pouring concrete to grade as specified by owners for footings and 9 in. basement walls.

(5) Stripping forms and removal of same after the pouring and setting of concrete.

(6) Raising house from old foundation on Lot 1, Block L, Nome, Alaska, and placing same on skids, preparatory to removal to new location.

(7) Moving house to new location.

(8) Raising, lining up and placing house on new location foundation.

(9) Framing a new addition to house on its new location and installing in connection therewith

a triple window frame and three sash, an outside door frame, roof valley tin, shingles, celote, siding strips, corner boards and felt paper, all in so far as materials were available and all in accordance with owner's specifications.

(10) Applying asbestos shingles to house including addition, when supplied by owners.

(11) Remodeling kitchen and old stairway of house in accordance with owners directions.

(12) Placing tailings gravel for backfill, in and around the basement walls of the new location of house, all as directed by owners. [4]

B. Materials furnished and other items of expense.

6 pc. 4/8½ black celotex at \$4.00.....	\$24.00
3 windows—1 triple frame—	
1 O. S. door frame.....	52.30
Roof valley tin and bracket.....	3.50
7 concrete flue blocks at \$2.95.....	20.65
1 keg 16 D commons.....	12.00
1 keg 8 D commons.....	12.00
1 keg 6 D commons.....	12.00
Form wire	10.00
8 pcs. 2/12-16 ft.	31.00
1 bunch wood shingles.....	3.50
5 pcs. 1/4-12 ft. No. 1 fir finish.....	3.50
3 bunches siding strips.....	1.50
2 lbs. siding nails.....	.40
3 rolls 15 lb. felt.....	11.35
20 lbs. 2 D. shingle nails.....	2.40
Sand and gravel for backfill and concrete.....	261.00
Rent on Cat and concrete mixer.....	64.00
Tax on materials furnished.....	1.47
	—
	\$ 526.08

Labor from Sept. 10 inc. Dec. 16 (exclusive), 1946	
987 hours	\$2,220.75
<hr/>	
Total	\$2,746.83
10-15-46 on account	1,000.00
<hr/>	
	\$1,746.83

Dated November 5, 1947.

/s/ W. M. GILLIS.

(Acknowledgment of Service.)

[Title of District Court and Cause.]

ANSWER

Answering the Complaint of the plaintiff, the defendants admit, deny and allege:

I.

Answering Paragraph 1 of said Complaint, defendants admit that plaintiff is now and at all times mentioned in said Complaint, was a contractor and builder doing business at Nome, Alaska, and that the defendants are and were the owners of Lot 1, in Block L, and Lot 8 and the No. 22 ft. of Lot 7 in Block B, and the building formerly upon Lot 1, in Block L, Nome, Alaska, and that said building is now situate on Lot 8 and the No. 22 ft. of Lot 7, in Block B in said city; and except as hereinafter affirmatively alleged, deny generally all other allegations in said paragraph 1 of said Complaint.

II.

Answering paragraph 3 of said Complaint, defendants have no knowledge or information suffi-

cient to form a belief as to such allegations and therefore, deny the same.

III.

Answering paragraph 4 of said Complaint, defendants admit that the plaintiff filed a purported lien in the office of the Recorder for the Cape Nome Precinct, Second Division, Alaska, on the 14th day of March, 1947, and that a purported copy of such lien is attached to said Complaint; and defendants deny generally all other allegations set forth in said paragraph 4.

IV.

Answering paragraph 5 of said Complaint, defendants admit that they paid to the plaintiff the sum of \$1,000.00 on account of work done by him for moving the house of the defendants from Lot 1, Block L, to Lot 8 and the No. 22 ft. of Lot 7, in Block B, pursuant to the agreement hereinafter affirmatively alleged and the defendants otherwise deny generally all of the allegations in said paragraph 5 of said Complaint.

V.

Further answering plaintiff's Complaint and by way of Cross Complaint, defendants allege that on or about the 8th day of August, 1946, plaintiff and defendants entered into an agreement wherein and whereby the plaintiff agreed to move, in a skillful and workmanlike manner, the residence of the defendants located on Lot 1, Block L, on the south side of Front Street, to Lot 8 and the No. 22 ft. of Lot 7 in Block B, in Nome, Alaska, which said lots and

residence were then and now are owned by the defendants; and under the terms of which said agreement, the plaintiff was to pour a full cement basement, in a skillful and workmanlike manner, for said residence at the place to which the same was to be moved and to build thereon, when said residence was moved, an addition of the size of 8 ft. x 30 ft. across the back and enclose a porch to be used for a dining room of the size 7 ft. x 17 ft. on the east side, and to complete the same in a skillful and workmanlike manner for occupancy. And to take the heavy timbers of the size 6" x 8" from the bulkhead on Lot 1 Block L on the south side of Front Street and use them as posts in the concrete basement, under the residence, when moved, as braces. And to have said building moved and completed as aforesaid in the month of October, 1946. And under the terms and conditions of said agreement, all materials were to be furnished by the defendants and for which the defendants promised and agreed to pay to the plaintiff the sum of \$2,872.28. [6]

VI.

That prior to the commencement of the moving of said dwelling and at the request of the plaintiff, the defendants paid to the plaintiff upon such contract the sum of \$1,000.00.

That the plaintiff in violation of said agreement, failed, neglected and refused to move said residence to said Lot 8 and the No. 22 ft. of Lot 7 in Block B until on or about the 12th day of November, 1946, and after freezing weather.

VIII.

In the latter part of January, 1947, the plaintiff advised the defendants that he was going to do nothing further in connection with the moving of said residence of defendants, or upon such residence, or the concrete basement thereunder. That thereafter the defendants completed said cement basement at a cost of \$327.50 which sum was a reasonable amount therefor.

IX.

That the plaintiff left said residence unbraced by reason of which it sagged in the middle a distance of five inches and until the doors in the building would not open and the defendants were compelled to have said building raised and five bracing posts put thereunder and for which they expended the sum of \$190.00.

X.

That the defendants had thawed and excavated a sump, in the basement of said dwelling, and expended therefor \$39.75, which said sump the plaintiff, wantonly and negligently filled in and the same became a total loss to the defendants.

XI.

That the plaintiff in the moving of said dwelling after freezing weather had begun, negligently left the basement of said building open by reason of which the ground floor of the basement froze and plumbing was damaged, and to repair it the defendants have expended the sum of not less than \$107.89.

XII.

That in the moving of said residence, the plaintiff carelessly and negligently failed to sufficiently brace a concrete block chimney, so that it was practically ruined and to repair it the defendants have paid the sum of \$100.00.

XIII.

That the plaintiff failed, neglected and refused to complete the addition to said residence to be used for a dining room and defendants were compelled to complete the same at a cost of \$260.00.

XIV.

That the plaintiff removed and took away from said premises one Burks pressure pump, which has never been returned to the defendants, of the value of \$150.00.

XV.

That in the moving of said residence, the plaintiff cut off one corner of said residence and failed, neglected and refused to repair the same, and the cost of such repair will be at least \$100.00.

XVI.

That in the pouring of the walls of said cement basement the plaintiff negligently poured the same without proper foundation by reason of which the walls of said basement cracked in diverse places and the water now seeps through the walls into the basement, by reason of which the defendants have been damaged in the sum of \$500.00. [7]

XVII.

That by reason of the plaintiff failing to move said building and have the same ready for occup-

ancy as provided for in said agreement, the defendants were unable to move into said residence before the 15th day of February, 1947, and were compelled to expend for room rent during such period that they were kept from the occupancy of such residence, in the sum of \$410.00; and were compelled to board at the restaurants during such period and for such board they expended the sum of \$412.00.

XVIII.

That by reason of the breach of said contract by the plaintiff and his failure to move said dwelling and have the same ready for occupancy as provided for in said agreement, the defendants have been damaged in the sums and amounts as herebefore stated and in the total sum of \$2,597.14.

Wherefore the defendants pray judgment against the plaintiff for the sum of \$724.86; and for the costs and disbursements herein incurred, including a reasonable attorney's fee.

/s/ O. D. COCHRAN,
Attorney for Defendants.

(Duly Verified.)

[Endorsed]: Filed Nov. 26, 1947.

[8]

[Title of District Court and Cause.]

REPLY

In reply to defendants answer filed herein, plaintiff admits, denies and alleges as follows:

1.

Replying to paragraph V of said answer, plaintiff admits and alleges that on or about the 8th day of August, 1946, he was approached by defendants in reference to furnishing the work and labor necessary to do the jobs for defendants as outlined in said paragraph V, and that at the time defendants stated that all materials would be furnished by them: That plaintiff then and there informed defendants that he was tied up doing contract work and that in the event he undertook the work for defendants, their work would have to be wedged in between these contract jobs. Plaintiff also admits, that at the request of defendants he furnished them with an estimated labor cost bill which was in the amount of \$2,872.28; that defendants stated they considered the estimate of labor too high, but later notified plaintiff to go ahead and do the work.

Except as admitted herein, plaintiff denies every allegation in said paragraph V contained.

2.

Replying to paragraph VI of defendants answer, plaintiff acknowledges receipt from defendants of \$1,000.00 paid on account of work being then performed under defendants' "go ahead" order set forth in paragraph 1 herein just above, but that said sum was less than the amount or sum then due plaintiff for the work he had already performed for them.

Except as herein admitted, plaintiff denies all allegations in said paragraph VI contained.

3.

Replying to paragraphs VIII of defendants' answer, plaintiff admits telling defendant Ben F. Gillette that he would do no more work for defendants but that the statement was made after defendant Irene Gillette had ordered plaintiff to discontinue the work as affirmatively alleged hereinafter.

Due to lack of information, plaintiff denies all other allegations in said paragraphs VIII contained.

4.

Replying to paragraph IX of defendants' answer, plaintiff, because of lack of information, denies all allegations therein contained; and alleges that if any sagging took place as alleged, it took place after work had been stopped by defendant Irene Gillette, and was not the fault of plaintiff.

5.

Replying to paragraph X of defendants' answer, because of lack of information, plaintiff denies all allegations therein contained; and alleges that if a sump was filled in as alleged, it was filled in by reason of back-fill placed at the direction of defendants and without acknowledge on the part of plaintiff of any such sump. [9]

6.

Replying to paragraph XI of defendants' answer, plaintiff because of lack of information, denies all allegations therein contained; and alleges that plaintiff had nothing whatsoever to do with the plumbing of defendants' residence either before or after it was moved.

7.

Replying to paragraph XII of defendants' answer, plaintiff denies all allegations therein contained.

8.

Replying to paragraph XIII of defendants' answer, plaintiff, because of lack of information, denies all allegations therein contained; and alleges that prior to the time work was stopped by defendant Irene Gillette, materials were not available for the completion of the dining room as alleged.

9.

Replying to paragraph XIV of defendants' answer, plaintiff denies all allegations therein contained.

10.

Replying to paragraph XV of defendants' answer, plaintiff admits cutting off a corner of the cornice of the residence building in order to get the building in place and that he did not repair the same, but alleges that the cornice was cut off with the knowledge, consent and approval of defendants, and that the same was not repaired due to the fact that defendant Irene Gillette, stopped the work before the repairs could be made.

Plaintiff, due to lack of information, denies all other allegations in said paragraph XV contained.

11.

Replying to paragraph XVI of defendants' answer, plaintiff, due to lack of information denies all allegations therein contained, and alleges that defendants prepared the foundation for the pour-

ing of the cement walls and that the pouring was done in accordance with directions of defendants.

12.

Replying to paragraph XVII of defendants' answer, plaintiff, due to lack of information, denies all allegations therein contained, and alleges that any expenditures made by defendants as alleged, was not the result of breach of contract on the part of plaintiff.

13.

Replying to paragraph XVIII of defendants' answer, plaintiff denies all allegations therein contained.

For further reply to defendants' answer plaintiff alleges:

A.

That although defendants originally agreed that they would furnish all materials necessary to complete the jobs as alleged and for which plaintiff was hired to furnish the labor, from time to time as the work progressed, materials were needed which defendants did not have available, and at such times defendants authorized plaintiff to supply such materials. This plaintiff did as to the materials which he could obtain, and as shown in detail in the "Detailed Statement of Account" filed by plaintiff in this cause. [10]

B.

That on or about the 15th day of December, 1946, in front of the North Pole Bakery, Nome, Alaska, in the presence of plaintiff and another person, defendant Irene Gillette, in response to

an inquiry from plaintiff as to whether or not defendants had obtained certain needed materials for defendants' work at hand, defendant Irene Gillette replied, "No we haven't, and you can just let the whole thing go." That immediately thereafter, because of this order, plaintiff took his workmen from defendants' job and removed his tools.

That sometime after this order by Irene Gillette, and after plaintiff had removed his workmen and tools from defendants' work, defendant Ben F. Gillette made inquiry of as to when he would return and complete defendants' work. That Ben F. Gillette was then and there informed by plaintiff that he had been ordered off the work by Irene Gillette and that he was not returning to do any more work for defendants.

Wherefore, having replied to defendants' answer, plaintiff prays for judgment and decree in accordance with the prayer of his complaint.

/s/ C. C. TANNER,
Attorney for Plaintiff.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 11, 1947.

[11]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This cause came on for hearing on the 26th day of December, 1947, before this court without a jury,

C. C. Tanner appearing for the plaintiff and O. D. Cochran appearing for the defendants, and evidence of both parties having been heard, the court reserved decision until the 29th day of March, 1948, at which time a memorandum of Findings and Conclusions was served upon both parties, counsel for defendants having died before such decision was made, and the attorney for plaintiff having since refused to make or file Findings of Fact, Conclusions of Law or Judgment herein, the Court being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I.

That plaintiff is now and was at all times hereinafter mentioned, a contractor and builder, doing business at Nome, Alaska.

II.

That defendants are now and were at all times hereinafter mentioned the owners of Lot 8, and the North 22 feet of Lot 7, Block 5, Nome, Alaska, and the owners of the dwelling house thereon. [12]

III.

That on or about August 8, 1946, plaintiff undertook to pour a full concrete basement on the land described in paragraph two hereof and to move defendants' dwelling house from its then location on the south side of Front Street in Nome, Alaska, to the land described in paragraph two hereof. That said basement and the moving operations

were to be completed in October, 1946, at a cost of Two Thousand Eight Hundred Seventy-two and 28/100 (\$2,872.28) Dollars. That all materials were to be furnished by the defendants. That defendants paid plaintiff on account the sum of One Thousand (\$1,000.00) Dollars on October 10, 1946. That plaintiff did not complete the moving of the house in the month of October, 1946, but continued to work thereon from time to time until December 15, 1946, at which time he abandoned the work.

IV.

That on March 14, 1947, plaintiff filed his claim of lien for the sum of Two Thousand Seven Hundred Forty-six and 83/100 (\$2,746.83) Dollars, in which he gave credit to the defendants for One Thousand (\$1,000.00) Dollars advanced, his claim of lien being thereby reduced to One Thousand Seven Hundred Forty-six and 83/100 (\$1,746.83) Dollars; that said claim of lien was filed in the office of the recorder of the Cape Nome Precinct, Second Division, Territory of Alaska.

V.

That after the abandonment by the plaintiff of the work on defendants' house, the defendants completed the full concrete basement which plaintiff had failed to complete at a cost to them in the sum of Three Hundred Twenty-seven and 50/100 (\$327.50) Dollars. [13]

VI.

That the plaintiff left the dwelling house of the defendants unbraced by reason of which it sagged

in the middle a distance of five inches and until the doors in the building would not open and the defendants were compelled to have said building raised and five bracing posts put thereunder and for which they expended the sum of One Hundred Ninety (\$190.00) Dollars.

VII.

That the defendants had thawed and excavated a sump, in the basement of said dwelling, and expended therefor the sum of Thirty-nine and 75/100 (\$39.75) Dollars, which said sump the plaintiff wantonly and negligently filled in and the same became a total loss to the defendants.

VIII.

That the plaintiff is not shown to be responsible for any damage to the concrete block chimney, for which defendants claim One Hundred (\$100.00) Dollars.

IX.

That the plaintiff is shown to be responsible for failure to complete the addition to said dwelling house to be used as a dining room, for which defendants claim Two Hundred Sixty (\$260.00) Dollars.

X.

That the plaintiff is not shown to be responsible for the removal of the Burks Pressure Pump for which defendants claim One Hundred Fifty (\$150.00) Dollars.

XI.

That plaintiff is not shown to be responsible for having left the basement of the dwelling open, or

for damage [14] by frost to the basement floor and the plumbing, for which defendants claim One Hundred Seven and 89/100 (\$107.89) Dollars.

XII.

The plaintiff is not shown to be responsible for the cutting off one corner of the dwelling house, for which defendants claim One Hundred (\$100.00) Dollars.

XIII.

That plaintiff is not shown to be responsible for negligently pouring the concrete basement walls without proper foundation, for which defendants claim the sum of Five Hundred (\$500.00) Dollars.

XIV.

That plaintiff is not shown to be responsible for defendants' room rent, as alleged and claimed in paragraph XVII of the defendants' answer at Four Hundred Ten (\$410.00) Dollars, and defendants' board as alleged therein at Four Hundred Twelve (\$412.00) Dollars.

XV.

That in the moving operations of the plaintiff, he furnished materials at the request of the defendants to the value of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.

And from the foregoing Findings of Fact, the Court concludes:

CONCLUSIONS OF LAW

I.

That plaintiff is entitled to judgment against defendants for materials furnished by him at the

instance [15] of the defendants in the sum of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.

II.

That defendants are entitled to judgment against the plaintiff in the sum of Eight Hundred Seventeen and 25/100 (\$817.25) Dollars.

III.

That no attorneys' fees or costs be allowed either party.

IV.

That on settlement, the lien filed by plaintiff be discharged.

Dated at Nome, Alaska, this 27th day of August, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Aug. 27, 1948.

[16]

In the District Court for the Territory of Alaska,
Second Division.

No. 3737—Civil

W. M. GILLIS,

Plaintiff,
vs.

BEN F. GILLETTE and IRENE GILLETTE,
Defendants.

JUDGMENT

This cause having come on for trial on the 26th day of December, 1947, before the Court, without

a jury, C. C. Tanner appearing for the plaintiff and O. D. Cochran appearing for the defendants, and the Court having heard testimony of both plaintiff and defendants, and the arguments of counsel, and having reserved decision until the 29th day of March, 1948, at which time a memorandum of the Court's decision was served upon both parties, counsel for the defendants having died before such decision was made, and the attorney for plaintiff having since refused to make or file Findings of Fact, Conclusions of Law or Judgment herein, and the Court having now made and filed Findings of Fact and Conclusions of Law herein, and being fully advised in the premises, does now adjudge:

1. That the plaintiff is entitled to judgment against defendants for materials furnished by him at the instance of the defendants in the sum of Five Hundred Twenty-six and 08/100 (\$526.08) Dollars.
2. That defendants are entitled to judgment against the plaintiff in the sum of Eight Hundred Seventeen and 25/100 (\$817.25) Dollars.
3. That no attorneys' fees or costs be allowed either party. [17]
4. That on settlement, the lien filed by plaintiff be discharged.

Dated at Nome, Alaska, this 27th day of August, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Aug. 27, 1948.

[18]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The above-named Plaintiff, W. M. Gillis, considering himself aggrieved by the Final Judgment of this Court made and entered in the above-entitled action on the 27th day of August, 1948, in favor of the Defendants and against the Plaintiff, for the sum of \$291.17, does hereby appeal from said Judgment to the United States Circuit Court of Appeals for the Ninth Circuit: said Appeal being taken to the extent and for the reasons set forth in the Assignment of Errors, which is filed herewith,

Wherefore, Plaintiff prays that this Appeal be allowed: that a Citation issue to the Defendants in accordance with law: and that a Transcript of the record, proceedings and papers upon which the aforesaid Judgment was made be certified to and sent to the Appellate Court:

The Plaintiff Further Prays that the Court fix the amount of cost bond required of Plaintiff on Appeal.

Dated the 20th day of October, 1948.

C. C. TANNER,
Attorney for Plaintiff,
W. M. Gillis.

[Endorsed]: Filed Oct. 20, 1948.

[19]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes Now W. M. Gillis, Plaintiff herein, and alleges that the Final Judgment made and entered in the above-entitled cause on the 27th day of August, 1948, is erroneous and unjust to him and is not in conformity with the Findings of Fact filed in said cause: and, in support of the foregoing allegations, he now sets forth the Assignment of Errors upon which he will rely on Appeal.

1.

For the purpose of this Appeal the Plaintiff accepts as true the Court's Findings of Fact and contends that the Court's Conclusion of Law and Judgment are not consistent with such findings as hereinafter set forth:

2.

The Court erred in not concluding as a matter of law that under the contract of labor between Plaintiff and Defendants, that Plaintiff was entitled to judgment for the contract cost of labor (\$2,872.28), minus the sum of \$1,000.00 paid on account, and the damages found owing to Defendants in the total sum of \$817.25. [20]

3.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for a reasonable attorney's fee designated by the Court.

4.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for the sum of \$1.95, the cost of filing his lien.

5.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to judgment for costs.

6.

The Court erred in not concluding as a matter of law that Plaintiff was entitled to a judgment of foreclosure against Defendants' property described as Lot Eight (L. 8) and the North twenty-two feet (No. 22') of Lot Seven (L. 7), Block "B" (Bl. B), Nome, Alaska, for his unpaid labor bill in the sum of \$1,055.03, plus costs of materials furnished in the sum of \$526.08, plus a designated, reasonable attorney's fee, plus the lien filing fee of \$1.95, plus costs.

7.

The Court erred in not finding as a matter of law that Plaintiff was entitled to judgment for interest at the rate of 6% per annum on the sum of \$1,581.11 (labor bill of \$1,055.03, plus costs of materials furnished \$526.08) from the 16th day of December, 1946, until paid.

8.

The Court erred in not giving and entering judgment in favor of Plaintiff for labor performed in the sum of \$1,055.03; said sum being the difference between the contract price (\$2,872.28), minus the sum paid Plaintiff on account (\$1,000.00) and the damages allowed Defendants (\$817.25). [21]

9.

The Court erred in not giving and entering judgment in favor of Plaintiff for a designated, reasonable attorney's fee.

10.

The Court erred in not giving and entering judgment in favor of Plaintiff for his lien filing fee of \$1.95.

11.

The Court erred in not giving and entering judgment in favor of Plaintiff for his costs.

12.

The Court erred in not giving and entering judgment of lien foreclosure against Defendants' premises described as Lot Eight (L. 8) and the North twenty-two feet (No. 22') of Lot Seven (L. 7), Block "B" (Bl. B), Nome, Alaska, for the sum of \$1,581.11, plus the lien filing fee of \$1.95, plus a designated, reasonable attorney's fee, plus Plaintiff's costs.

13.

The Court erred in not giving and entering judgment in favor of Plaintiff for interest at the rate of 6% per annum on the sum of \$1,581.11 from the 16th day of December, 1946, until paid.

Wherefore, Plaintiff prays that said Judgment be reversed, revised, corrected and amended, all in accordance with the foregoing Assignment of Errors, and that the Plaintiff receive Judgment for that which is justly due him.

Dated this 20th day of October, 1948.

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

[Endorsed]: Filed Oct. 20, 1948.

[22]

[Title of District Court and Cause.]

**ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND**

This day came Plaintiff, W. M. Gillis, by his attorney, C. C. Tanner, and filed and presented his Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and his Assignment of Errors, and upon consideration thereof

It Is Now Ordered that said Appeal be, and the same is hereby allowed; and that the Plaintiff shall execute a bond for costs on appeal according to law in the sum which is hereby fixed at \$250.00:

It Is Further Ordered that a Citation issue to the Defendants in accordance with law:

It Is Further Ordered that a transcript of the record, proceedings and papers upon which Judgment in this cause was made be certified to and sent to the Appellate Court aforesaid.

Dated at Nome, Alaska, this 20th day of October, 1948.

/s/ JOSEPH W. KEHOE,
Judge of the District Court, for the Territory of
Alaska, Second Division.

Presented by:

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

[Endorsed]: Filed Oct. 20, 1948.

[23]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That we, W. M. Gillis, as principal, Joseph Wallace of Nome, Alaska, and Axel Edman of Nome, Alaska, as sureties, are hereby held and firmly bound unto Ben F. Gillette and Irene Gillette, above-named Defendants, in the sum of \$250, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of October, 1948.

The condition of the above obligation is such that:

Whereas, the above-named, bounden Plaintiff has filed his Petition of Appeal and is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Final Judgment made and entered by the Judge of the above-entitled Court, on the 27th day of August, 1948, [24] wherein the above-named Defendants were given Judgment against the above-named Plaintiff for the sum of \$291.17, and

Whereas, said Plaintiff is appealing from said Judgment to the extent and in accordance with his Assignment of Errors filed herein on appeal, to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse, revise, correct and amend said Judgment,

Now Therefore, if the Plaintiff, above-named, shall prosecute said appeal to effect and answer

all costs that may be adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ W. M. GILLIS,
Principal.

/s/ JOSEPH WALLACE,
Surety.

/s/ AXEL EDMAN,
Surety.

United States of America,
Territory of Alaska—ss.

Joseph Wallace and Axel Edman being first duly sworn, each for himself, says:

I am one of the sureties who executed the foregoing Bond on Appeal. I am a resident of Nome, Alaska. I am not a counselor or attorney at law, Marshal, Deputy Marshal, Commissioner, Clerk of any Court or other officer of any Court. I am worth the sum of \$500.00 over and above all my just debts and liabilities and exclusive of property exempt from execution.

/s/ JOSEPH WALLACE,
/s/ AXEL EDMAN.

Subscribed and Sworn to before me this 28th day of October, 1948.

(Seal) /s/ C. D. ANDERSON,
Notary Public in and for the Territory of Alaska,
Residing at Nome. My Commission expires Oct.
27, 1951.

The foregoing Bond is approved this 4th day of October, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Nov. 5, 1948.

[25]

[Title of District Court and Cause.]

STIPULATION RE: PRINTING OF RECORD

It is hereby stipulated, by and between the above-named parties, that in printing the papers and records to be used on the hearing on Appeal in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and Cause in full and on all papers shall be omitted, except on the first page of said record and that there shall be inserted in place of said title on all papers used as a part of said records the words "Title of Court and Cause". Also, that all endorsements on said papers used as a part of said record may be omitted, except as to the Clerk's file marks and the admission of service.

Dated this 6th day of December, 1948.

W. M. GILLIS,
By /s/ C. C. TANNER,
His Attorney.

/s/ IRENE A. GILLETTE,
/s/ BEN F. GLLETTE,
Defendants.

[Endorsed]: Filed Dec. 23, 1948.

[26]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
TRANSCRIPT ON APPEAL

A Motion, supported by Affidavit, having on the 2nd day of December, 1948, been duly presented to the Court by W. M. Gillis, Plaintiff and Appellant herein, praying for an extension of time within which the Clerk of this Court may file Transcript on Appeal with the United States Circuit Court of Appeals at San Francisco, California, and the Court considering the Motion well taken,

It Is Now Ordered that the time for the filing of such Transcript be, and the same is hereby extended, up to and including the 17th day of January, 1949.

Dated this 2nd day of December, 1948.

/s/ JOSEPH W. KEHOE,
United States District Judge.

[Endorsed]: Filed Dec. 2, 1948.

[27]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: Norvin W. Lewis, Clerk of the above-entitled Court.

W. M. Gillis, Plaintiff and Appellant herein, hereby requests that you prepare transcript of record on Appeal in the above-entitled cause and file the transcript in the office of the Clerk of the United

States Circuit Court of Appeals for the Ninth Circuit, sitting in San Francisco, California:

A designation of the records and papers to be included in such transcript follows:

1. Complaint.
2. Plaintiff's "Detailed Statement of Account".
3. Answer.
4. Reply.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Petition for Appeal.
8. Assignment of Errors.
9. Order Allowing Appeal and Fixing Cost Bond.
10. Cost Bond on Appeal.
11. Citation.
12. Stipulation on Printing of Record.
13. Praeclipe.
14. Also, included in this transcript, any Order this Court may hereinafter make extending the time for filing the transcript. [28]

Please prepare this transcript as required by law and the rules and orders of this Court and the Circuit Court of Appeals for the Ninth Circuit, and forward same to the said Appellate Court at San Francisco, California, so that it may be docketed therein on, or before, the 13th day of December, 1948.

Dated this 8th day of November, 1948.

/s/ C. C. TANNER,

Attorney for Plaintiff and Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 23, 1948.

[29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska, Second Division—ss.

I, Norvin W. Lewis, Clerk of the District Court of the Territory of Alaska, Second Division, do hereby certify that the foregoing transcript on Appeal consisting of typewritten pages, from 1 to 29 both inclusive, is a true and exact transcript of the Complaint, Plaintiff's "Detailed Statement of Account", Answer, Reply, Findings of Fact and Conclusions of Law, Judgment, Petition for Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Cost Bond, Cost Bond on Appeal, Stipulation on Printing of Record, Order Enlarging Time to File Transcript and Praecipe in the case of W. M. (alias Bill) Gillis, Plaintiff vs. Ben F. Gillette and Irene Gillette, Defendants, No. 3737 this Court and of the whole thereof, as appears from the Records and Files in my Office at Nome, Alaska, and I further certify that the Original Citation on Appeal is annexed to this Transcript.

Cost of Transcript \$12.40 paid by C. C. Tanner,
Attorney for Plaintiff, W. M. Gillis.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 31st day of December, 1948.

(Seal) /s/ NORVIN W. LEWIS,
Clerk.

[Title of District Court and Cause.]

CITATION ON APPEAL

To: The Defendants above-named, Ben F. Gillette and Irene Gillette, and to their attorney, whoever he may be,

Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within forty (40) days from the date of this Writ, pursuant to an Appeal filed in the Clerk's Office of the District Court of the Territory of Alaska, Second Division, wherein W. M. Gillis is Plaintiff and Appellant, and Ben F. Gillette and Irene Gillette are Defendants and Appellees, to show cause, if any there be, why the Final Judgment made and entered in said cause on the 27th day of August, 1948, should not be reversed, revised, corrected and amended in accordance with Appellant's Assignment of Errors filed on Appeal herein.

In Witness Whereof, I, Joseph W. Kehoe, Judge of the District Court, for the Territory of Alaska, Second Division, have hereunto set my hand the 4th day of November, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 23, 1948.

[Endorsed]: No. 12145. United States Court of Appeals for the Ninth Circuit. W. M. (alias, Bill) Gillis, Appellant, vs. Ben F. Gillette and Irene Gillette, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Second Division.

Filed January 4, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.